# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1948

# No. 712

## JULIA LEARNED STEINER, PETITIONER,

*vs.*

## COUNTY OF LOS ANGELES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

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[fol. 1]

# IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

## Clerk's Transcript

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

COUNTY OF LOS ANGELES; WILLIAM A. SMITH, LEONARD J. ROACH, John Anson Ford, Raymond V. Darby and Roger W. Jessup, and each of them as members of the Board of Supervisors of said County; Wayne Allen, as Chief Administrative Officer of said County; Harold W. Kennedy as County Counsel of said County; Charles C. Mack, G. H. Newland and T. J. O'Keefe, and each of them, as members of the Civil Service Commission of said County; Clifford Amsden, as Secretary and Chief Examiner of said Commission; Michael Donoghue, as Registrar of Voters of said County; I Doe, II Doe, III Doe, IV Doe and V Doe, Defendants

AMENDED COMPLAINT FOR INJUNCTION AND FOR DECLARATORY RELIEF—Filed Feb. 2, 1948

For a first cause of action against the defendants the plaintiff alleges:

I

The plaintiff is a citizen of the United States and a citizen of the State of California, and she is a resident of the County of Los Angeles.

At all times herein she has been, and now is, an employee of the County of Los Angeles, being a permanent Civil Service employee, engaged as librarian Grade 1 in the Central Library of the County of Los Angeles. She has [fol. 2] been an employee of the County since October, 1946.

The plaintiff was born in Saginaw, Michigan, is a graduate of the University of Michigan, as well as of the Michigan State College, and Michigan State Normal College.

The plaintiff brings this action in her behalf as an individual, and in a representative capacity on behalf of ap-

proximately 20,000 other employees of the County of Los Angeles similarly situated. Said other employees are similarly situated, in that they are, and each of them is, employed by said County under and by virtue of the same provisions of the Charter of the County of Los Angeles, (hereinafter called Charter), and the same Rules of the Los Angeles County Civil Service Commission (hereinafter called Rules), and subject to the same provisions of said Charter and Rules respecting examination, selection, appointment, tenure, promotion, demotion, transfer, disciplines, discharge, suspension, classification and rating of efficiency, and are now, or are about to be, subjected to the same "Loyalty Check" hereinafter alleged. The question herein is one of common and general interest to all said 20,000 employees of said County, and said employees are numerous, and it is impractical to bring them all before this Court.

II

(a) Defendant County of Los Angeles, (hereinafter called County) is a political subdivision of the State of California [fol. 3] charged with governmental powers, including the power to sue and be sued.

(b) Defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, are members of and each of them is a member of, the Board of Supervisors of the County, elected respectively, from the first, second, third, fourth, and fifth supervisor districts of said County. Defendant, Raymond V. Darby is Chairman of said Board of Supervisors.

(c) Defendant, Wayne Allen, is Chief Administrative Officer of the County.

(d) Defendant, Harold W. Kennedy, is the County Counsel of the County.

(e) Defendant, Eugene W. Biscailuz, is the Sheriff of the County.

(f) Defendants, Charles C. Mack, G. H. Newland and T. J. O'Keefe, are members of, and each of them is a member of, the Civil Service Commission of the County.

(g) Defendant, Clifford N. Amsden, is Secretary and Chief Examiner of said Civil Service Commission.

(h) Defendant, Michael Donoghue, is the Registrar of Voters of the County.

(i) Each of the defendants named in subdivision (b) through (h) above, is a resident of the County and engaged in the performance of the duties of their respective offices alleged above, in the City of Los Angeles in the County. [fol. 4] (j) Defendants Allen, Kennedy, Biscailuz and Amsden have been constituted by defendants members of the Board of Supervisors, and continuously since August 26, 1947, have been and now are, members of a Committee ordered and directed to meet, coordinate, supervise and effectuate the Loyalty Check hereinafter alleged. Said defendants will hereinafter be collectively referred to as the Committee.

III

Plaintiff is ignorant of the true names of the defendants sued herein by the fictitious names of I Doe, II Doe, III Doe, V Doe and V Doe, and hereby ask- leave of Court to amend her complaint by inserting the true names of such defendants in the place and stead of such fictitious names, when such true names shall have been ascertained.

IV

On or about April 1, 1947, the Board of Supervisors of the County, comprised of the members alleged in paragraph II (b) hereof, directed that defendants Wayne Allen and Harold W. Kennedy study, prepare and recommend ways and means in which an investigation could be made into the political beliefs and affiliations of all employees of the County, in order to determine whether or not there are any members of the Communist Party of the United States, avowed or otherwise, or any persons who are "commu- [fol. 5] nistic" or "subversive" in the employ of the County, its agencies and districts.

V

Under and by virtue of said direction of said Board of Supervisors, defendants, Wayne Allen and Harold W. Kennedy, did on or about August 15, 1947, submit to said Board of Supervisors their recommendations that there be conducted among the employees of the County a "Loyalty Check." A true and correct copy of said recommendations is attached hereto, marked Exhibit "A" and by this reference made a part hereof as fully as if set forth herein at length, and is hereinafter called the "Loyalty Check."

## VI

On or about August 26, 1947, said defendant members of the Board of Supervisors did accept and adopt said "Loyalty Check" and did order and direct that said "Loyalty Check" be put into operation and effectuated.

The defendants, through the defendant Smith, have announced that any employee found to be a Communist or refusing to sign the "loyalty oath and affidavit" will be discharged, the statement by the defendant Smith being, "Any employee found to be a Communist or refusing to sign the loyalty oath and affidavit will be out—period!"

## VII

Defendant members of the Committee are now engaged [fol. 6] in the coordination, supervision and effectuation of the "Loyalty Check" and have threatened and do now threaten, and will, unless restrained by this Court, cause plaintiff and all employees similarly situated to be discharged or otherwise penalized in their employment unless they execute the oath and affidavit prescribed and required by paragraph numbered 5 of said "Loyalty Check."

## VIII

In the coordination, supervision and effectuation of the "Loyalty Check" defendant members of the Committee have threatened to, intend to, and will, presume that employees of Los Angeles County, (including plaintiff and all employees similarly situated) and who have ever belonged to or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit, are subversive, and will,

(a) Publicly report such employees to the defendant members of the Board of Supervisors as subversive and disloyal, and

(b) Call upon such employees to carry the burden of proving to said defendants that they are not subversive and disloyal, and

(c) Reduce, remove or otherwise discriminate against such employees for failure so to prove.

## IX

In the coordination, supervision and effectuation of the [fol. 7] "Loyalty Check" defendant members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Inquire into the political beliefs of plaintiffs and all employees similarly situated;

(2) Inquire into the political and community organizations and associations of plaintiff and all employees similarly situated;

(3) Require that plaintiff and all employees similarly situated reveal and disclose their political beliefs and opinions, the political and other organizations to which they now belong or have ever since December 7, 1941 belonged, or which they have "directly or indirectly supported, or follows;"

(4) Require that plaintiff and all employees similarly situated reveal and disclose the newspapers, books, magazines or other publications which they have since December 7, 1941, directly or indirectly supported or follows, or do now so support or follow;

(5) Require that plaintiff and all employees similarly situated renounce and forego political opinions, beliefs, associations, organizations, newspapers, books, magazines or other publications considered or deemed by said defendants to be "communistic" or "subversive" or otherwise unorthodox in the discretion of the said defendants;

[fol. 8] (6) Define in their arbitrary and uncontrolled discretion, those thoughts, beliefs and opinions, those political organizations and associations, and those newspapers, books, magazines or other publications which shall be orthodox and unorthodox for plaintiff and all employees similarly situated.

## X

In the coordination, supervision and effectuation of the "Loyalty Check," defendant members of the Committee intend to, have threatened to, and unless restrained by this Court, will,

(1) Publicly report to the defendant members of the Board of Supervisors as subversive and disloyal, plaintiff

and all employees similarly situated, or some of them, on account of (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiff or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any news- [fol. 9] paper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(2) Subject to a penalty which may include discharge, plaintiff and all other employees similarly situated, or any of them, on account of, (a) any opinion or belief now held or held at any time subsequent to December 7, 1941, by said plaintiff or said employees and deemed "subversive" or "communistic" or otherwise unorthodox in the arbitrary discretion of said defendants; (b) membership at any time, past or present, in any political organization or association, or having directly or indirectly supported or followed, at any time, past or present, any political organization or association listed in the oath and affidavit constituting part of said "Loyalty Check"; (c) having directly or indirectly supported or followed at any time, past or present, any newspaper, book, magazine or other publication listed in the oath and affidavit constituting part of said "Loyalty Check."

(3) Interfere with the rights of plaintiff or any employees similarly situated if they so elect to join any political party, including the Communist Party, whether or not deemed orthodox or unorthodox by defendant members of the Committee, or support or follow some or all of the principles, tenets or beliefs of any such party.

[fol. 10] XI

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in connection therewith are without authority and unlawful in

that said "Loyalty Check" and said acts of defendants discriminate against plaintiff and all employees similarly situated because of their political opinions or affiliations contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

XII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful for the reason that they deny to plaintiff and to all employees similarly situated due process of law in violation of the First and Fourteenth Amendments to the Constitution of the United States in that:

(a) They require plaintiff and all employees similarly situated to disclose their political opinions and associations;

(b) They abridge for plaintiff and all employees similarly situated freedom of speech, freedom of opinion, freedom of belief, freedom of association, freedom of the press and the opportunity for free political discussion and [fol. 11] association;

(c) They prescribe or threaten to prescribe that which is orthodox in political belief and association for plaintiff and all employees similarly situated.

XIII

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts and threatened acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they deny plaintiff and all employees similarly situated due process of law contrary to the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 9 thereof in that they subject said plaintiff and said employees to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read, prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J.

Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and is thereby an ex post facto law and a bill of attainder.

XIV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of defendants in [fol. 12] connection therewith as alleged in paragraphs VII, VIII, IX and X above, are without authority and unlawful because they are an ex post facto law contrary to and in violation of Article I, Section 16 of the Constitution of the State of California in that they subject plaintiff and all employees similarly situated to penalties which may include discharge by reason of opinions, speech, associations, newspapers, books, magazines or other publications and acts held, engaged in, belonged to, participated in or read prior to the time the said "Loyalty Check" was adopted by the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles, and it is thereby an ex post facto law and a bill of attainder.

XV

The said "Loyalty Check" is void on its face and as authoritatively construed and the acts of the defendants, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger W. Jessup, members of the Board of Supervisors of the County of Los Angeles in connection therewith, and the acts of the defendants, Wayne Allen, Harold A. Kennedy, Eugene W. Biscailuz, and Clifford Ameden, are without authority and unlawful because they deny plaintiffs and all employees similarly situated of due process of law contrary to the Fourteenth Amendment to the Constitution of the United States and Article I, Sec- [fol. 13] tion 9, thereof, and Articles I, Section 16 and Article VI, Section 1 of the Constitution of the State of California in that they constitute a finding of fact and determination that the Communist party, Communism and Communists are illegal and subversive, that they advocate the overthrow of the government by force and violence, the authority of which to make such finding and determination are by virtue thereof violative of the division of govern-

mental powers prescribed in the Constitution of the United States and of the State of California and are a bill of attainder.

XVI

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith as alleged in paragraphs VII, VIII, IX and X above, are unlawful and without authority because they deprive plaintiff and all employees similarly situated of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States in that they deny to said plaintiff and said employees equal opportunity for employment and establish conditions of employment not applicable to employees generally and is a wholly arbitrary, unreasonable and discriminatory classification of employees based upon their exercise of their constitutional rights to freedom of political and other thought, opinion, belief, conscience, speech, press, association and of organization based upon a wholly unascertainable, indefinite, vague, ambiguous and uncertain standard of classifica-
[fol. 14] tion.

XVII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants in connection therewith are without authority and unlawful because they deny plaintiffs and all employees similarly situated due process of law contrary to the Fourteenth Amendment to the Constitution of the United States in that they discriminate against said plaintiffs and said employees and assess penalties against them without prescribing any ascertainable standard therefor.

XVIII

The said "Loyalty Check" is void on its face and as authoritatively construed, and the acts of defendants Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford Amsden, in connection therewith, as alleged in paragraph VIII above, are without authority and unlawful because they deny plaintiff and all employees similarly situated due process of law and equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States in that they establish a presumption that any county employee who has ever belonged to or di-

rectly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive and said presumption has no rational or other relationship be-
[fol. 15] tween the fact of an employee's membership in or having directly or indirectly supported or followed any such organization and the fact that he is now subversive, and further in that the creation of such presumption gives the employee so affected no reasonable or other opportunity to submit the facts in his defense.

XIX

Plaintiff and all employees similarly situated have no plain, adequate, or speedy remedy at law, and by this action a multiplicity of suits on behalf of some 20,000 employees of the County of Los Angeles seeking protection from the void and unlawful acts and threatened acts of the defendants will be obviated.

XX

By reason of the "Loyalty Check" and the unlawful acts and threatened acts of the defendants as alleged herein, plaintiff and all employees similarly situated have suffered and will suffer irreparable damage which cannot be compensated by monetary damages assessed by a court of law, in that they will be subjected to an unlawful and unconstitutional inquiry into their political opinions and affiliations; they will be required to disclose to defendants their opinions and affiliations under pain of a penalty which may include discharge; they will be publicly stigmatized as subversive and disloyal by reason of their political opinions and beliefs.

[fol. 16] As and for a second count and cause of action, plaintiff alleges:

I

Realleges as fully as if set forth herein at length, all of the allegations of her first cause of action in this amended complaint.

II

There is an actual controversy between plaintiff, and employees similarly situated on whose behalf this action is brought, and the defendants in the following respects:

1. Whether the oath and affidavit required by defendants to be executed as hereinabove alleged, deprives plaintiff and

all employees similarly situated of their constitutional rights and privileges, as hereinabove set forth.

2. Whether the presumption applied by the defendants, that County employees who have ever been members of or directly or indirectly supported or followed any of the organizations listed in said oath and affidavit, is subversive and disloyal, violates the constitutional rights and privileges of plaintiffs and all employees similarly situated, as hereinabove set forth.

3. Whether the threat by defendants publicly to report as disloyal and subversive all County employees who have ever belonged to or directly or indirectly supported or fol-
[fol. 17] lowed any of the organizations listed in said oath and affidavit, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

4. Whether the imposition of the burden of proof that they are not subversive or disloyal upon such County employees who have ever belonged to or directly or indirectly supported or followed any of said organizations, as hereinabove alleged, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

5. Whether the threatened action of defendants to discharge or otherwise penalize any County employee who fails to carry such burden of proof, as aforesaid, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

6. Whether the threatened action of defendants in inquiring into the political opinions and affiliations, newspapers, books and other publications of all County employees, or which they have supported or followed, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

7. Whether the threatened action of defendants in requiring that County employees reveal and disclose their political opinions and affiliations, newspapers, books and other
[fol. 18] publications, or which they have supported or followed, violates the constitutional rights and privileges of plaintiff and all employees similarly situated, as hereinabove set forth.

8. Whether the threatened action of defendants in defining in their arbitrary and uncontrolled discretion to political opinions and affiliations, and those newspapers, books, magazines or other publications which shall be orthodox or unorthodox, violates the constitutional rights and privileges of plaintiff and all other employees similarly situated, as hereinabove set forth.

9. Whether the Loyalty Check is void on its face and as authoritatively construed for the reason that it is violative of and contrary to the provisions of the Constitutions of the United States and the State of California, as hereinabove alleged.

10. Whether the Loyalty Check and the acts and threatened acts of defendants in connection therewith are contrary to and in violation of Section 41 of the Charter of the County of Los Angeles.

11. Whether under the provisions of the Charter, including but without limitations Sections 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California herein- [fol. 19] above alleged, plaintiff and all employees similarly situated may be required to execute said oath and affidavit as a condition of continued employment.

12. Whether under the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California hereinabove alleged, defendants, or any of them, may impose upon plaintiff or any employees similarly situated any penalty or discrimination for failure or refusal to execute said oath and affidavit.

13. Whether by reason of the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California here-

inabove alleged, any order or requirement by defendants, or by any officer or agent of Los Angeles County acting under their direction or supervision, that plaintiff or any employees similarly situated execute said oath and affidavit is a lawful order or requirement as to plaintiff and any employees similarly situated.

[fol. 20] 14. Whether by reason of the provisions of the Charter, including but without limitations Section 34 (13) and 41 thereof, and of the Rules and Regulations of the Los Angeles County Civil Service Commission made and issued in connection therewith, and the provisions of the Constitutions of the United States and the State of California hereinabove alleged, plaintiff and all employees similarly situated may fail or refuse to execute said oath and affidavit without being discharged, discriminated against, or otherwise penalized on account of said failure or refusal or because said failure or refusal constitutes disobedience of a lawful order of a superior.

Wherefore, plaintiff prays:

1. For a preliminary and final injunction restraining and prohibiting defendants, and each of them, their agents, employees, successors, from

(a) Requiring, directly or indirectly, or by any means whatsoever plaintiff or any employee similarly situated, to execute the oath and affidavit prescribed in paragraph numbered 5 of the Loyalty Check.

(b) Discriminating with respect to hire, tenure, or any term or condition of employment, or in any way, directly or indirectly, against plaintiff or any employee similarly situated, for refusal or failure to execute said oath and affidavit.

(c) Creating, establishing or applying, directly or in-
[fol. 21] directly, or by any means whatsoever, any presumption of inference that plaintiff, or any employee similarly situated, are subversive from the fact that they have at any time belonged *or* or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(d) Requiring any plaintiff or any employee similarly situated to prove that he is not subversive and imposing on any such employee any burden of proof because of or on

account of having at any time belonged to or directly or indirectly supported or followed any organization listed in said oath and affidavit.

(e) Requiring, directly or indirectly, or by any means whatsoever, that plaintiff, or any employee similarly situated, reveal or disclose or otherwise make known to defendants their political opinions or affiliations, or the political utterances they have made or the writings or publications they have written, participated in or read.

(f) Inquiring in any way, directly or indirectly, through check of political registrations, files or agencies of the County or any other government, the oath and affidavit prescribed in the Loyalty Check, or by any means whatsoever, into the political opinions, affiliations, utterances, publications of plaintiff or any employee similarly situated.

(g) Reporting publicly as subversive or disloyal, plaintiff [fol. 22] or any employee similarly situated, for or on account of failure or refusal to execute the aforesaid oath and affidavit, or any political opinion, affiliation speech, utterance, publication of said plaintiff or said employees.

2. For a judgment declaring that defendants may not do or require to be done the things sought to be enjoined as prayed above, for the reason that the doing or requiring to be done of these things violates the provisions of the Charter of the County of Los Angeles and the Constitutions of the United States and of the State of California, in the respects alleged in the Complaint.

3. For such other and further relief as to this Court may seem meet and just.

4. For costs of suit herein.

Respectfully submitted, A. L. Wirin & Fred Okrand,
by A. L. Wirin, Attorneys for Plaintiff.

[fol. 23] EXHIBIT "A" TO AMENDED COMPLAINT

Subject: Loyalty Check

On April 1, 1947, the Board of Supervisors directed that the Chief Administrative Officer and the County Counsel study, prepare, and recommend ways and means in which a proper investigation can be made to determine whether or not there are any Communists, avowed or otherwise, that may be employed by the County of Los Angeles, its agencies and districts.

As the result of a preliminary investigation directed towards the ascertaining of reasonable and justified procedure which will accomplish the desire of your Honorable Board, the following is recommended:

1. The County Auditor will prepare in triplicate an alphabetical list of the names of the approximately 20,000 persons on his payroll cards. Mr. J. H. Lowery, the County Auditor, has cooperated fully in this matter and agreed to furnish such lists.

2. Present one of those lists to Michael Donoghue, the Registrar of Voters, with the request that he check this list against the names of any persons who have registered as Communists at any time during the past ten years. Mr. Donoghue has heartily agreed to make this check.

3. Request the Federal Bureau of Investigation to check this list against the subversive file of the Federal Bureau of Investigation.

4. Require all officers and employees coming under the jurisdiction of the Board of Supervisors to execute on oath of the type and character attached hereto.

5. Require such officers and employees to execute an affidavit setting forth every name that such person has ever been known by, and setting forth further that he has never [fol. 23a] at any time been a number of, or supported or contributed to, any organization advocating the over-throw of our form of government, and further declaring in such affidavit that he has never at any time been a member of, or supported or contributed to, any organization listed in the affidavit, which organizations have been mentioned in one or more of the reports of the Joint Fact-Finding Committees of 1943, 1945, and 1947, on un-American activities in

California, filed and accepted by the California Legislature on the following dates: (1943) April 9, 1943, 55th Session, Senate Journal, page 1145; (1945) June 14, 1945, 56th Session, Senate Journal, page 3856; (1947) March 24, 1946, 57th Session, Assembly Journal, page 20.

With reference to the treatment which has been given to the several reports of the Joint Fact-Finding Committee, appointed by the California Legislature, we wish to make it clear that the mentioning of the name of an organization in these reports does not necessarily mean and is not intended to convey the implication that they are subversive or Communistic or have ever engaged in any subversive or Communistic activities.

Part of the technique of subversively inclined Communists is to secretly infiltrate organizations with the purpose of eventually achieving some subversive purpose. In the meantime, rank and file members often are enrolled wholly innocent of subversive possibilities but attracted to the organization by its publicly alleged purposes which have every appearance of being patriotic and worthy.

A careful reading of the Tenney reports will disclose that there are instances in the reports where organizations are named, but it was not claimed by the Fact-Finding Committee that such organizations were in themselves subversive, but that subversive or Communistic organizations were endeavoring to place such organizations under their influence. We believe, however, that in ferreting out Communism it is a practical approach to start with the organizations which are known to exist for the purpose of [fol. 23b] over-throwing our government, or are known to be subversive or Communistic, and then give careful consideration to such other organizations as the reports of the Joint Fact-Finding Committee of the California Legislature indicates might have come under some subversive or Communistic influence.

By way of summary, it is to be emphasized that the organizations set forth in the list, which is a part of the affidavit, that by their designation there it is not intended to infer that they are necessarily subversive or Communistic, as of course we have no facilities for knowing their true character. For this reason each employee, by indicating that he is or was a member, should understand that he will be given ample opportunity to indicate that the organization was not subversive or Communistically inclined, or that he

personally was not an advocate of subversive or Communistic doctrines.

6. Appoint a committee consisting of the Chief Administrative Officer, the Sheriff, the Secretary of the Civil Service Commission, and the County Counsel, to meet, coordinate, and supervise the loyalty check program, and keeping its information confidential at all times, except when reports are made as outlined in paragraph 8.

7. Channel all information and reports to this committee, which shall keep all information confidential. Authorize the committee to use the facilities of the Sheriff's office for the purpose of seeking additional information relative to specific cases.

8. Require the committee to report periodically to the Board of Supervisors if any known subversively inclined persons are located with a recommendation by the committee in connection with each particular person in question.

Very truly yours, Wayne Allen, Chief Administrative Officer; Harold W. Konnedy, County Counsel.

ENCL.

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[fol. 23c] EXHIBIT "A"

Oath and Affidavit

Department .....

A. Oath of Office or Employment

I, ....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God.

B. Affidavit Re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941,

a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: .....
and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit Re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: .....

[fol. 23d] D. Membership In Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

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|---|---|---|
| Abraham Lincoln Brigade | 43 | 140 |
| Academic and Civil Rights Council of California | 43 | 97 |
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| American Comm. for a Free Indonesia | 47 | 56 |
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| American Comm. to Save Refugees | 47 | 45 |
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| American Communist Party | 43 | 116 |
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Subscribed and sworn to before me this — day of ——, 1947. J. F. Moroney, County Clerk, by —— ——, Deputy.

[fol. 24] [File endorsement omitted.]

[fol. 25] IN SUPERIOR COURT OF LOS ANGELES COUNTY

DEMURRER TO PLAINTIFF'S AMENDED COMPLAINT—Filed February 10, 1948

Come now the defendants in the above entitled action and demur, both generally and specially, to plaintiff's amended complaint on the following grounds, to wit:

I

Plaintiff's first cause of action does not state facts sufficient to constitute a cause of action.

II

Plaintiff's first cause of action, and particularly paragraph VI thereof, is uncertain as it does not appear therefrom whether the defendant William A. Smith made the statements alleged in said paragraph in his official capacity as a member of the Board of Supervisors at a time when said Board was meeting as a Board of Supervisors, or whether the said statements were made by the defendant William A. Smith as a private citizen.

III

That the first cause of action, and more particularly paragraph VII thereof is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats therein, or any of the actions alleged to be taken, are or will be

the acts of the defendant members of the Loyalty Check [fol. 26] Committee as individuals, or whether the alleged threats are or will be that of the Loyalty Check Committee itself acting in its official capacity.

(2) Said paragraph VII is uncertain in that it does not appear therein what the factual basis is for the conclusion that threats have been or will be made, or that plaintiff will be caused to be discharged or otherwise penalized.

(3) Said paragraph VII is uncertain because it does not appear therefrom whether the acts or threats complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

IV

The first cause of action, and particularly paragraph VIII thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph VIII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that defendants "will presume that employees . . . who have [fol. 27] ever belonged to, or directly or indirectly supported or followed any of the organizations or publications listed in said oath and affidavit are subversive . . ." and will then take the action described in paragraphs (a), (b) and (c) of said paragraph VIII.

(3) Paragraph VIII and particularly sub-paragraph (b) thereof, is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that employees will be called upon to carry the burden of proving to said defendants that they are not subversive and disloyal.

(4) Paragraph VIII and particularly sub-paragraph (c) thereof, is uncertain in that it does not appear from said paragraph what factual basis exists for the conclusion that the defendants will reduce, remove or otherwise dis-

criminate against employees for failure to prove that they are not subversive and disloyal.

(5) Said paragraph VIII is uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee, as described by the order of the Board of Supervisors, dated August 26, 1947.

V

The first cause of action, and particularly paragraph IX [fol. 28] thereof, is uncertain in the following facts, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the acts alleged to be taken, are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check Committee itself, acting in its official capacity.

(2) Paragraph IX is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2), (3), (4), (5) and (6) of paragraph IX of plaintiff's complaint.

(3) Said Paragraph IX, and the whole thereof, is further uncertain in its entirety because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VI

The first cause of action, and particularly paragraph X thereof, is uncertain in the following respects, to wit:

(1) It is uncertain whether any of the threats alleged therein, or any of the actions alleged to be taken are or will be the acts of the defendant members of the Loyalty Check Committee as individuals, or whether the alleged threats and acts are or will be that of the Loyalty Check [fol. 29] Committee itself acting in its official capacity.

(2) Paragraph X is uncertain as it does not appear therefrom what the factual basis is for any of the conclusions contained in sub-paragraphs (1), (2) and (3) of said paragraph.

(3) Said paragraph X is further uncertain because it is impossible to ascertain therefrom whether the threatened acts complained of are within or without the authority of the Loyalty Check Committee as described by the order of the Board of Supervisors dated August 26, 1947.

VII

Plaintiff's first cause of action, and particularly paragraph XI thereof, is uncertain in the following respects to wit:

(1) It cannot be determined therefrom whether the "acts of defendants" referred to therein is a reference to acts of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them.

(2) Paragraph XI is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion that defendants will discriminate against plaintiff and all employees similarly situated because of their political opinions or affiliations.

(3) Paragraph XI is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether [fol. 30] said acts threatened or otherwise alleged generally in paragraph XI are within or without the scope of the authority of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

VIII

Paragraph XII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

IX

Paragraph XIII is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

X

Paragraph XIV is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

XI

Plaintiff's first cause of action, and particularly paragraph XV thereof, is uncertain as it cannot be ascertained therefrom what acts by the defendants are without authority and unlawful.

XII

That paragraph XVI is uncertain for all of the reasons that paragraphs VII, VIII, IX and X of plaintiff's first cause of action are uncertain.

[fol. 31]

XIII

That plaintiff's first cause of action, and particularly paragraph XVII ther-of, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom whether the "acts of the defendants" referred to therein is a reference to the acts of the Board of Supervisors or members of the Loyalty Check Committee, or of all of them, or any number of them.

(2) Said paragraph is uncertain for the reason that it cannot be determined therefrom what acts of the defendants will discriminate against plaintiff.

(3) Paragraph XVII is uncertain as it does not appear therefrom what the factual basis is for the conclusion that the acts of the defendants will result in a discrimination against the plaintiff.

(4) Paragraph XVII is uncertain in that it does not appear therefrom what the factual basis is for the conclusion that the defendants will assess penalties against plaintiff without ascribing any ascertainable standard therefor.

(5) Paragraph XVII is further uncertain in that it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in said paragraph will be within or without the scope of the Loyalty Check Committee as set forth in the order [fol. 32] of the Board of Supervisors adopted August 26, 1947.

XIV

Plaintiff's first cause of action and particularly paragraph XVIII is uncertain in that it does not appear therefrom or from paragraph VIII what the factual basis is for the conclusion that the acts of defendants, Wayne Allen, Harold W. Kennedy, Eugene W. Biscailuz and Clifford N. Amsden establish a presumption that "any county employee who has ever belonged to or directly or indirectly supported or followed any organization listed in the oath and affidavit is now subversive."

XV

That plaintiff's first cause of action, and particularly paragraph XX, is uncertain in the following respects, to wit:

(1) It cannot be determined therefrom what specific acts and threatened acts of the defendants will result in irreparable damage to plaintiff.

(2) It cannot be determined therefrom whether the plaintiff is referring to acts of the Board of Supervisors, or members of the Loyalty Check Committee, or all of them, or any of them.

(3) Said paragraph XX is further uncertain as it is impossible to determine from the conclusions of the plaintiff whether said acts threatened or otherwise alleged generally in paragraph XX are within or without the scope [fol. 33] of the Loyalty Check Committee as set forth in the order of the Board of Supervisors adopted August 26, 1947.

(4) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiff will be publicly stigmatized as subversive and disloyal by reason of political opinions and beliefs.

(5) Paragraph XX is uncertain as it does not appear therefrom what the factual basis is for the conclusion that plaintiff will be required to disclose to defendants her opinions and affiliations under pain of penalty which may include discharge.

XVI

Plaintiff's first cause of action in its entirety is uncertain in that plaintiff alleges she will be presumed subversive and disloyal, will be stigmatized as subversive and disloyal, and will be discharged, discriminated against and assessed penalties, and must renounce and forego her political beliefs and opinions, but nowhere in said complaint does plaintiff allege that she has directly or indirectly supported or been a member of any of the organizations listed in the loyalty check order as pleaded by reference in plaintiff's amended complaint, nor does she allege that she has ever or now does advocate the overthrow of government by force or violence.

[fol. 34]

XVII

That the first cause of action is ambiguous for the same reasons that it is uncertain.

XVIII

That the first cause of action is unintelligible for the same reasons that it is uncertain.

Second Cause of Action

Come now defendants and demur both generally and specially to plaintiff's second cause of action on the following grounds, to wit:

I

That plaintiff's second cause of action fails to state facts sufficient to constitute a cause of action.

II

That plaintiff's second cause of action, and particularly paragraph I thereof, is uncertain as the same incorporates paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XX of plaintiff's first cause of action as a part thereof and that said paragraphs incorporated are uncertain for all of the reasons as stated in defendants' demurrer to plaintiff's first cause of action.

III

Plaintiff's second cause of action, and particularly paragraph II thereof, is uncertain for the following reasons, to wit:

[fol. 35] (1) Paragraph II, and particularly subparagraphs (2), (3), (4), (5), (6), (7), and (8) are uncertain for the reason that apart from the conclusions of plaintiff, it cannot be ascertained therefrom what the factual basis is for any of the generalizations therein contained with reference to threatened action by defendants and by virtue of which a controversy is alleged to exist.

(2) Paragraph II, and particularly subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it cannot be determined therefrom whether the allegation "defendants" referred to therein is a reference to acts of the members of the Board of Supervisors or members of the Loyalty Check Committee, or all of them, or any number of them, and further whether said "defendants" are acting as individuals or in their official capacity.

(3) Paragraph II and particularly subparagraphs (1), (2), (3), (4), (5), (6), (7), (8), and (10) thereof are uncertain in that it is impossible to ascertain if any of the defendants are members of the Loyalty Check Committee meeting and acting as the Loyalty Check Committee, whether their acts are within or without the scope and authority of the Loyalty Check order by the Board of Supervisors dated August 26, 1947.

(4) Sub-paragraph (11) of paragraph II is uncertain for the reason that it cannot be ascertained therefrom [fol. 36] what the factual basis is for the conclusion that execution of the oath and affidavit is "a condition of continued employment."

(5) Sub-paragraph 12 of Paragraph II is uncertain in that it cannot be ascertained therefrom what the factual basis is for the conclusion by plaintiff that defendants may impose upon plaintiff any penalty or discrimination for failure or refusal to execute said oath and affidavit.

(6) Sub-paragraph 14 of paragraph II is uncertain in that it cannot be ascertained therefrom whether plaintiff

intends to and will hereafter fail and refuse to execute the said oath and affidavit.

IV

Plaintiff's second cause of action is uncertain in that she alleges that a controversy between plaintiff and defendants exists but she does not allege any facts with respect to direct or indirect support or membership in any of the organizations listed in the Loyalty Check Order as pleaded by reference in plaintiff's amended complaint, nor does she allege that she has ever or now does advocate the overthrow of government by force and violence.

V

That plaintiff's second cause of action is ambiguous for the same reasons that it is uncertain.

VI

That plaintiff's second cause of action is unintelligible [fol. 37] for the same reasons that it is uncertain.

Wherefore defendants pray that the demurrer be sustained without leave to amend; that plaintiff take nothing by this action; that the same be dismissed; that defendants have judgment against plaintiff for defendants' costs incurred herein; and for such other and further relief as to the Court may seem meet and proper in the circumstances.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

We, Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, attorneys for the above-named defendants, do hereby certify that the above demurrer to plaintiff's complaint is not interposed for the purpose of delay and that in our opinion the issues therein raised are well taken in law.

Harold W. Kennedy, County Counsel, and Gerald G. Kelly, Deputy County Counsel, and Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

[fol. 38] [File endorsement omitted.]

[fol. 39] In Superior Court of Los Angeles County

Amendment to Amended Complaint for Injunction and for Declaratory Relief—Filed March 1, 1948

Leave of court being first had, the plaintiff files this amendment to amended complaint for injunction and for declaratory relief:

The amended complaint for injunction and for declaratory relief is by this Amendment amended as follows:

The following is added and inserted in said amended complaint in the first cause of action thereof, at page 11, line 19, and immediately following Paragraph XVIII of said amended complaint:

XVIII A

Plaintiff refuses to execute the oath and affidavit aforesaid for the reason that she deems such oath and affidavit, and the order of the Board of Supervisors and its members requiring the plaintiff to execute said oath and affidavit to violate the rights of the plaintiff as aforesaid.

The following is added to and inserted in said amended complaint in the second cause of action thereof, at page 13, line 6, following paragraph I of said second cause of action in said amended complaint:

IA

Plaintiff refuses to execute the oath and affidavit afore-
[fol. 40] said for the reason that she deems such oath and affidavit, and the order of the Board of Supervisors and its members requiring the plaintiff to execute said oath and affidavit to violate the rights of the plaintiff as aforesaid.

A. L. Wirin & Fred Okrand, by A. L. Wirin, Attorneys for Plaintiff.

(Verification)

(Affidavit of Service by Mail—1013a, C.C.P.)

State of California,
County of Los Angeles, ss:

Lucy Aoki, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the county of

Los Angeles; that affiant is over the age of eighteen years and is not a party to the within above entitled action; that affiant's business address is: 257 South Spring Street, Los Angeles 12, California, that on the 27th day of February, 1948, affiant served the within Amendment to Amended Complaint for Injunction and for Declaratory Relief, on the defendants in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said defendants at the office address of said attorney, as follows: "Gerald G. Kelly, Esq., Deputy County Counsel, 1100 Hall of Records, Los Angeles 12, California"; and [fol. 41] by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United Stat-s Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is a delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

Lucy Aoki.

Subscribed and sworn to before me this 27th day of February, 1948. Miwako Yanamoto, Notary Public in and for said County and State of California. My Commission Expires Sept. 28, 1951. (Seal.)

[File endorsement omitted.]

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[fol. 42] In Superior Court of Los Angeles County

Order Sustaining Demurrer

March 5, 1948 Department 34

(Entered March 12, 1948)

Honorable Clarence M. Hanson, Judge Presiding

534177 (Minute Order)

Demurrer to Amended Complaint having been heretofore submitted is sustained without leave to amend. The restraining order is discharged.

[fol. 43] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

RAYMOND V. DARBY, et al., Defendants

JUDGMENT OF DISMISSAL

In this action the defendants County of Los Angeles, William A. Smith, Leonard J. Roach, John Anson Ford, Raymond V. Darby and Roger Jessup, and each of them as members of the Board of Supervisors of said County, Wayne Allen, as Chief Administrative Officer of said County, Harold W. Kennedy, as County Counsel of said County, Charles C. Mack, G. H. Newland, and T. J. O'Keefe, and each of them as members of the Civil Service Commission of said County, Clifford Amsden, as Secretary and Chief Examiner of said Commission, Michael Donoghue, as Registrar of Voters of said County having demurred to plaintiff's amended complaint, the Court being duly advised in the premises and the Court having sustained the demurrer without leave to amend by an order duly made,

Now, Therefore, by virtue of the law in the premises aforesaid, it is

Ordered, Adjudged and Decreed that the above entitled [fol. 44] action be and the same is hereby dismissed, and that the defendants have and recover from the plaintiff herein their costs and disbursements incurred in this action, in the sum of $3.00.

Dated this 8 day of March, 1948.

Clarence M. Hanson, Judge of the Superior Court.

Endorsed: Filed Mar. 8, 1948. Earl Lippold, County Clerk by J. E. Shaw, Deputy. Entered Mar. 9, 1948, Book 1894, Page 203, by C. F. Escapite, Deputy.

[fol. 45] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534288

HELEN PARKER, et al., Plaintiffs,

vs.

COUNTY OF LOS ANGELES, et al., Defendants

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

THE COUNTY OF LOS ANGELES, et al., Defendants

MEMORANDUM RULING—March 5, 1948

The primary question presented, viewed in its broadest aspect, is whether the Board of Supervisors may require the officers and employees under its jurisdiction (1) to take an oath of allegiance to the federal and state constitutions, and the laws of California as against all enemies of the United States and the State, and (2) require such officers and employees to answer upon their oath certain questions that touch upon the oath.

The plaintiff in cause No. 534177 is a civil service employee of the County of Los Angeles. She alleges in her amended complaint that she is *not* a member of the Communist Party or of any of the organizations listed on the [fol. 46] questionnaire submitted to her. She avers, however, that the requirement thereby sought to be imposed upon her, i. e., that she take the oath in the form tendered and respond under oath to the questionnaire submitted, violates her constitutional rights as an American citizen.

The fifteen plaintiffs in cause No. 534288 allege in their amended complaint that they are civil service employees of the County of Los Angeles. They likewise aver that the requirement sought to be imposed upon them, i. e., that they take the oath in the form tendered and respond under oath to the questionnaire submitted, violates their constitutional rights as American citizens.

The form of the oath here in question, a part of the questionnaire, reads as follows:

> "A. . . . I, —— ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of the State of California, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office or employment on which I am about to enter or am now engaged. So Help Me God."

The other portions of the questionnaire, except for the organizations listed thereon, read as follows:

[fol. 47] "B. Affidavit re Subversive Activity

I do further swear (or affirm) that I do not advocate, nor am I now a member, nor have I been since December 7, 1941, a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by violence, except those specified as follows: —— —— and that during such time as I am an officer or employee of the County of Los Angeles, I will not advocate nor become a member of any political party or organization that advocates the over-throw of the Government of the United States, or State of California, or County of Los Angeles, by force or violence.

C. Affidavit re Aliases

I do further swear (or affirm) that I have never used or been known by any names other than those listed as follows: —— ——.

D. Membership in Organizations

I do further swear (or affirm) that I have never been a member of, or directly or indirectly supported or followed any of the hereinafter listed organizations, except those which I indicate by an X mark.

. . . . . .

—— ——.

Subscribed and sworn" etc.

[fol. 48] Before proceeding further it should be stated that when the demurrers to the original complaints in these causes came on for hearing before Judge Swain, he not only sustained the demurrers and denied a preliminary injunction but he expressed his views in a written opinion as well. In that opinion he stated the oath was entirely proper and the questionnaire likewise. The amended complaints now submitted to me to which demurrers have been filed allege certain new matters and, moreover, some new and additional authorities are now submitted which were not given to Judge Swain. Accordingly, it seems proper and advisable to submit my own views upon the two cases before me.

Without narrating in detail the allegations of the two amended complaints it will suffice to say that they allege, in almost every conceivable way, that the defendant board and its agents are without power to impose the requirements in question; that the manner, method and application of the power, if power there be, is without legal sanction and violative of the statutory and constitutional rights of the plaintiffs and all employees of the defendant county required to submit to the questionnaire and take the oath in question.

In this State it is well established that the Board of Supervisors under our Constitution, the state laws and the Charter of the County, exercises the powers of the county, except as it is otherwise specifically limited. The Board [fol. 49] is vested with the power to appoint all county officers and employees, not otherwise provided for by the Charter. However, with respect to the classified service, the appointments must be made from the so-called eligible civil service list.

The Civil Service provisions of the Charter authorize the Civil Service Commission to prescribe, amend and enforce rules for the classified service, to make investigations concerning the enforcement and effect of its rules, and the efficiency of the service. Moreover, the commission is empowered to reject candidates who wish to be placed upon civil service rolls where they fail to measure up to the reasonable requirements of the commission and likewise it is authorized to drop persons who have attained the eligible list, for like reasons.

In case the appointing power wishes to discharge a civil service employee the reasons therefor must be given and,

thereupon, if the employee so desires he is entitled to a hearing before the commission. If the commission finds that the reasons are not sufficient, the discharge is void, despite anything the appointing power can do about it.

From what has so far been said, it is self-evident that neither the Board nor its agents can discharge a civil service employee for any cause that the Civil Service Commission finds insufficient. Accordingly, if in the view of the Board [fol. 50] of Supervisors, or its agents as the appointing power, a civil service employee should be discharged on the sole ground that the employee is "subversive", the discharge or attempt to discharge on that ground is of no effect if, on hearing, the Commission holds otherwise.

What then are the powers of the Board and its agents with respect to laying a *good or bad* foundation for a discharge of an employee? Clearly, the appointing power—whether it be private or public—is entitled, subject to a review by the Commission, to discharge for cause or no cause, and, as a corollary, to investigate as it sees fit as a basis for such cause, save and except as it is restricted by law.

Section 41 of the Charter provides that "no person in the classified service . . . shall be appointed or reduced or removed or in any way favored or discriminated against because of his political or religious opinions or affiliations." Aside from this restriction there are no restrictions by the Charter or by law on the appointing power of the board or its agents in appointing or discharging civil service employees, except as noted.

It seems self-evident, then, that aside from any restraining constitutional provision, the Board of Supervisors itself or through its agents duly authorized may investigate to its heart's content the character, the antecedents, the [fol. 51] viewpoints and the affiliations of any of its employees, including those in the civil service, so long as the investigation does not touch upon the political or religious opinions or affiliations of the employee. Moreover, it would seem to follow that so long as the Board does not impinge upon these restrictions, it may, like any private employer, demand of its employee an oath, if it chooses, and a response to a questionnaire as a basis in whole or in part for his discharge. The fact that a person is on the civil service rolls does not insulate him from the lawful actions of the appointing power or enable him to restrict

them, except for the rights specifically granted to him by the provisions of the Charter. Like any private employer the county may question its employees *and demand* unquestioned loyalty, *in the manner it lays it down*, except as restricted by law. To be sure, a private employer, or a public employer, may now and then demand more than is necessary, in the view of individuals concerned or of the courts, but that fact, if it be a fact, is not a ground for the slightest interference on the part of the courts. (United Public Workers v. Mitchell, 1947, 91 L. Ed. 509.)

There remains then to consider whether the action, or the alleged threatened action, of the Board or its agents, violates the rights of the plaintiffs under the federal or the state constitutions. The plaintiffs contend that their [fol. 52] rights in this respect are violated in view of the provisions of the First and Fourteenth Amendments of the federal Constitution and the cognate provisions of our state constitution.

Shortly stated, the plaintiffs contend that the action of the Board and its agents in requiring the employees to take the oath propounded and to give answer to the questionnaire, under oath, violates an employee's rights guaranteed to him under the federal and the state constitutions. These rights, as set forth by the plaintiffs, are as follows:

(1) "Every citizen may freely speak . . . his sentiments on all subjects, being responsible for the abuse of that right. . . ." (California Constitution, Article I, Section 9.)

(2) "The people shall have the right to freely assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances." (Calif. Const., Art. I, Sec. 10.)

(3) "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (14th Amendment, U. S. Consti-[fol. 53] tution.)

In viewing the constitutional mantle thrown around an individual it is important to remember that the mantle is a *safeguard*, not *absolute*, but *relative* and *qualified*. Our

federal and state constitutional provisions which guarantee freedom of speech and of opinion, freedom of the press, freedom of assembly, are not licenses to do completely as one chooses, without regard to the other fellow, who possesses exactly the same liberties. When one purports to pursue the liberties granted by the constitution he needs to remember that the other fellow has equal liberties and, what is more, he has the liberty to refuse to listen to another's speech or opinion and the right to refuse to yield to him his own right of assembly. Conceivably, a person may be of the opinion that it is entirely proper to drive through a stop light, or on city streets at 80 miles an hour in violation of an ordinance, but even so, setting up constitutional provisions as a defense will prove ill-advised. So, too, one may believe that the 14th Amendment is a defense to acts that sabotage the Government or are subversive to it, but one will quickly find that the constitutional provision against treason is not cut down or modified, in the least, by the First Amendment or any other provision of the federal or state constitutions.

In what manner, then, do the requirements as laid down [fol. 54] by the Board, or as applied by its agents, impinge on the constitutional rights of the plaintiffs or any other officer or employee subject to the general jurisdiction of the Board? Some of the plaintiffs, but not all of them, do say that they have no objection to an oath that would require them to support the constitution, federal and state, but that the oath in question goes further and, consequently, violates their constitutional rights. The oath, it is true, calls upon the employee not only to support the constitution, state and federal, but to abjure enemies of the Government, both domestic and foreign, but even if that be true, as it is, what is wrong with that in these United States? Moreover, where is the consti-utional provision which directly or indirectly prohibits the Board from demanding that an employee subscribe to the oath? The answer is, there is none, and therefore no more need be said on that subject.

We come next to the questionnaire. It requires that the employee, aside from taking the oath submitted, answer under oath (1) whether or not he advocates the overthrow of the Government and whether or not, since December 1, 1941, he has been a member of any political party or organization that advocates the overthrow of the Government by

force or violence; (2) the name or names which he has used or been known by; (3) whether or not he has been a member of or directly or indirectly supported any of the organi-[fol. 55] zations listed on the questionnaire.

With respect to these particular questions in the questionnaire, the plaintiffs contend they violate their constitutional rights, in that, whether they do or do not personally advocate the overthrow of the Government by force or violence, or belong or do not belong to organizations with such objectives, the provisions of the two constitutions sustain them in their refusal to answer. This is the crux of the argument of the plaintiffs in this aspect of the case. Accordingly, we may now proceed at once to a determination of the issue thus made.

A year ago the Supreme Court of the United States answered these identical contentions in the case of United Public Workers v. Mitchell, 91 L. Ed. 509. Accordingly we may now well turn to that decision for the light it throws on the very similar problem which is posed in the case before us. In that case, instituted by civil service employees, as is the case here, it was contended that the so-called federal Hatch Act, in prohibiting federal classified civil service employees from taking "any active part in political management or in political campaigns", violated their constitutional rights in that it prohibited them from doing the very thing which an ordinary citizen could do with impunity. Accordingly, in that case as here, the plaintiffs sought declaratory relief and an injunction. In holding that the Act [fol. 56] was constitutional, the court pointed out that as early as 1882 the court had held that it was entirely proper for Congress to prohibit party activity by federal employees in the classified service. The court said: "The conviction that an actively partisan governmental personnel threatens good administration has deepened since Ex Parte Curtis (106 U. S. 371 (1882)).

. . . Congress and the President are responsible for an efficient public service. If, in their judgment, efficiency may be best obtained by prohibiting active participation by classified employees in politics as party officers or workers, we see no constitutional objection. . . . To declare that the present supposed evils of political activity are beyond the power of Congress to redress would leave the Nation impotent to deal with what many sincere men believe is a material threat to the democratic system.

". . . The determination of the extent to which political activities of government employees shall be regulated lies primarily with Congress. Courts will interfere only when such regulation passes beyond the general existing conception of governmental power . . .

"When actions of civil servants in the judgment of Congress menace the integrity and the competency of the service, legislation to forestall such danger and adequate to maintain its usefulness is required. The Hatch Act is the answer of Congress to this need. We cannot say with [fol. 57] such a background that those restrictions are unconstitutional."

As far back as in 1891 the Mayor of New Bedford, Massachusetts, discharged a policeman for engaging in political activities contrary to an ordinance or rule of the city. The policeman thereupon sued to regain his job on the theory that the ordinance or rule violated his constitutional rights to express his political opinions. In reply to the contention the late Justice Holmes writing the opinion for the court in McAuliffe v. New Bedford, 155 Mass. 216, said:

> "The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control . . ."

In Chrystal v. Police Commission, 33 Cal. App. 2d 564, it is said:

> "There is nothing startling in the conception that a public servant's right to retain his office or employment should depend on his willingness to forego his con- [fol. 58] stitutional rights and privileges to the extent that the exercise of such rights and privileges may be inconsistent with the performance of the duties of his office or employment."

In view of the decisions just quoted and especially that of the Supreme Court of the United States, it seems clear

that the acts of the defendant Board and its agents, whether they go to the extent claimed by the plaintiffs or not, are within the scope of the power of the Board and are in no sense unconstitutional. Whether the appointing power will or will not discharge employees as claimed by the plaintiffs, for causes of the character enumerated, and whether the Civil Service Commission will uphold such discharges, if any, on such causes, are not matters upon which this Court may speculate or adjudicate at this time. As no cause of action is stated by the complaints in either case, the demurrers thereto are sustained without leave to amend and the restraining orders heretofore issued are discharged.

Dated: March 5, 1948.

Clarence M. Hanson, Judge of the Superior Court.

[fol. 59] [File endorsement omitted.]

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[fol. 60] In Superior Court of Los Angeles County

No. 534177

Notice of Entry of Judgment—Filed March 10, 1948

To the plaintiff Julia Learned Steiner, and to her attorneys, Messrs. A. L. Wirin and Fred Okrand:

You, and each of you, will please take notice that Judgment of Dismissal as to all defendants in the above entitled action was duly entered by the Clerk of the Superior Court on the 9th day of March, 1948, in Book 1894, at page 203 of Judgments.

Dated this 9th day of March, 1948.

Harold W. Kennedy, County Counsel, by Gerald G. Kelly, Deputy County Counsel; by Robert L. Trapp, Deputy County Counsel, Attorneys for Defendants.

(Title of Court and Cause)

No. 534177

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Elsa Ruth Randall, being first duly sworn, deposes and says: That she is and was, at all times herein mentioned, a citizen of the United States and a resident of the County [fol. 61] of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that her business address is 1100 Hall of Records, City of Los Angeles, County of Los Angeles, State of California; That on the 10th day of March, 1948, she served the attached Notice of Entry of Judgment upon the attorneys for Plaintiff by depositing a copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in the United States postoffice mail box at Los Angeles, California, addressed as follows: Messrs. A. L. Wirin and Fred Okrand, Attorneys, 257 South Spring St., Los Angeles 12, California, and that the person on whom said service was made have their offices at a place where there is a delivery service by mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

Elsa Ruth Randall.

Subscribed and sworn to before me this 10th day of March, 1948. Earl Lippold, County Clerk, by Marie E. McPherson, Deputy.

[File endorsement omitted.]

[fol. 62] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES

No. 534177

JULIA LEARNED STEINER, Plaintiff,

vs.

THE COUNTY OF LOS ANGELES, et al., Defendants

NOTICE OF APPEAL

To the Defendants in the Above Entitled Action, and to Their Attorneys, Harold W. Kennedy, Gerald G. Kelly, and Robert L. Trapp, Esqs.:

Please take notice that the plaintiff in the above entitled action hereby appeals from that Judgment of Dismissal entered on March 9, 1948, and from that Order Sustaining Defendants' Demurrer to Plaintiff's Amended Complaint Without Leave to Amend, dated March 5, 1948.

Dated: March 24, 1948.

A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant.

[fol. 63] [File endorsement omitted.]

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[fol. 64] IN SUPERIOR COURT OF LOS ANGELES COUNTY

STIPULATION RE DESIGNATION OF RECORD ON APPEAL AND NOTICE TO CLERK TO PREPARE RECORD—Filed March 24, 1948

Plaintiff having filed her Notice of Appeal, it is stipulated between the attorneys for the parties in the above entitled action that the documents hereinafter set forth be the Record on Appeal, in accordance with Section 953a, California Code of Civil Procedure, and Rule 5 (b) Rules on Appeal for the Supreme Court and District Courts of Appeal of California, and the Clerk of the above entitled court is requested to make up and prepare the following documents only and certify the same as said Record on

Appeal to the Supreme Court of the State of California, this being an action involving injunction:

1. Amended complaint for injunction and declaratory relief;

2. Demurrer to plaintiff's amended complaint;

3. Amendment to amended complaint for injunction and declaratory relief;

4. Memorandum ruling dated March 5, 1948;

5. Order sustaining demurrer without leave to amend dated March 5, 1948;

6. Judgment entered March 9, 1948;

7. Notice of entry of judgment;

8. Notice of appeal;

[fol. 65] 9. This stipulation and notice.

Dated: March 24, 1948.

A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant; Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel; by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[File endorsement omitted.]

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[fols. 66-68] Clerk's Certificate to foregoing transcript omitted in printing.

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[fols. 69-399] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 400] IN THE DISTRICT COURT OF APPEAL, SECOND APPELLATE DISTRICT

Civil 16587

[File endorsement omitted]

JULIA LEARNED STEINER, Plaintiff and Appellant,

vs.

RAYMOND V. DARBY, et al., Defendants and Respondents

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Civil No. 16588

HELEN PARKER, et al., Appellants,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

OPINION *—Filed Nov. 12, 1948

Appeal from the Superior Court of Los Angeles County, Clarence M. Hanson, Judge.

A. L. Wirin, Fred Okrand; for Appellant Steiner.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents Raymond V. Darby, et al.

Gallagher, Margolis, McTernan & Tyre, John T. Mc-[fols. 401-431] Ternan, William B. Murrish; Kenny & Cohn, Robert W. Kenny; Charles J. Katz, for Appellants Parker, et al.

Harold W. Kennedy, County Counsel; Gerald G. Kelly and Robert L. Trapp, Deputies County Counsel, for Respondents County of Los Angeles, et al.

By stipulation of the parties the above entitled cases involving the same point are submitted for decision on a single set of briefs and since the identical point is in-

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(* Clerk's Note. This Opinion is printed in full in the Record in the Companion Case of Parker, et al., vs. County of Los Angeles.)

volved in each case they will be treated as the same case for the purposes of this opinion.

[fols. 432-603] The judgments are and each is affirmed.

McComb, J.

We concur:

Moore, P. J.; Wilson, J.

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[fol. 604] IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

[Title omitted]

STIPULATION RE RECORD ON APPEAL AND PRAECIPE—Filed March 23, 1949

The plaintiff and appellant in the above entitled action contemplating filing a petition for Writ of Certiorari in the Supreme Court of the United States,

It is Stipulated between the attorneys for the parties, that the entire record be certified by the Clerk of this Court to the Supreme Court of the United States save and except the following:

1. Stipulation re Retention of Appeal in Supreme Court;
2. Petition for Retention of Appeal in Supreme Court;
3. Application for Permission to File Brief of Amici Curiae in Support of Petition for Hearing, and Brief;

And the Clerk of this Court is requested to prepare and certify said record.

Dated: March 23, 1949.

[fol. 605] A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Plaintiff and Appellant. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Defendants and Respondents.

[fol. 606] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 607] [Stamp:] Filed Jan. 10, 1949. William I. Sullivan, Clerk, by —— —— L. A. Deputy

Order Due Jan. 11, 1949

In Supreme Court of California

2nd District, Division 2, Civil Nos. 16587, 16588

In the Supreme Court of the State of California
In Bank

Steiner, et al.,

v.

Darby, et al.

Parker, et al.,

v.

County of Los Angeles, et al.

Order Denying Hearing After Judgment by District Court of Appeal

Appellants' petition for hearing Denied.

Carter, J., voting for a hearing.

Gibson, Chief Justice.

Dated Jan. 10, 1949.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 23rd day of March, A. D. 1949.

William I. Sullivan, by W. J. Sinkford, Deputy Clerk.
(Seal.)

[fol. 608] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. —

JULIA LEARNED STEINER, Petitioner,

vs.

COUNTY OF LOS ANGELES, et al., Respondents

STIPULATION RE PRINTING OF THE RECORD

In accordance with the provisions of Rule 38 (8) of this Court, it is hereby stipulated between the attorneys for the parties in the above entitled action, that the entire record certified to this Court by the Clerk of the District Court of Appeal, State of California, Second Appellate District, be printed *except* the following:

1. Pages 67 and 68;
2. Page 70 through Page 399;
3. Page 401, beginning with the words "Conceded Facts" through the words "are dismissed" on Page 432;
4. Page 433 through Page 603.

Dated: This 30th day of March, 1949.

[fol. 609] A. L. Wirin & Fred Okrand, by Fred Okrand, Attorneys for Petitioner. Harold W. Kennedy, County Counsel; Gerald G. Kelly, Deputy County Counsel; Robert L. Trapp, Deputy County Counsel, by Gerald G. Kelly, Deputy County Counsel, Attorneys for Respondents.

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[fol. 609] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 13, 1949

The petition herein for a writ of certiorari to the District Court of Appeal of the State of California, Second Appellate District, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.